

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Robert A. Delitta, Individually and on
behalf of others similarly situated

**ANSWER TO
THIRD AMENDED
COMPLAINT**

Plaintiffs by,
Permissive Joinder,

-against-

07 CV 09441 (CLB)(MDF)

City of Mt. Vernon New York,
A Municipal Corporation

Defendant.

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Defendant, the City of Mount Vernon by and through its attorneys Bond, Schoeneck &
King, PLLC, hereby appears and answers the Complaint as follows:

1. DENIES the truth of the allegations contained in Paragraph 1 of the Complaint and respectfully refers all questions of law to the Court.
2. DENIES the truth of the allegations contained in Paragraph 2 of the Complaint and respectfully refers all questions of law to the Court.
3. DENIES the truth of the allegations contained in Paragraph 3 of the Complaint and respectfully refers all questions of law to the Court; however, ADMITS that the City of Mount Vernon is located within the District.
4. Upon information and belief, ADMITS the allegations contained in Paragraph 4 of the Complaint and respectfully refers the Court to the Complaint for its full form and content.

5. DENIES the truth of the allegations contained in Paragraph 5 of the Complaint and respectfully refers the Court to the Complaint for its full form and content and respectfully refers all questions of law to the Court.
6. ADMITS the truth of the allegations contained in Paragraph 6 of the Complaint.
7. ADMITS the truth of the allegations contained in Paragraph 7 of the Complaint.
8. DENIES the truth of the allegations contained in Paragraph 8 of the Complaint and respectfully refers the Court to the Complaint for its full form and content.
9. ADMITS the truth of the allegations contained in Paragraph 9 of the Complaint.
10. DENIES the truth of the allegations contained in Paragraph 10 of the Complaint except ADMITS that Delitta for the three years prior to filing the Complaint worked as a nonexempt Union employee for Defendant under applicable collective bargaining agreements.
11. DENIES the truth of the allegations contained in Paragraph 11 of the Complaint.
12. DENIES the truth of the allegations contained in Paragraph 12 of the Complaint.
13. DENIES the truth of the allegations contained in Paragraphs 13 (A), (B) and (C) of the Complaint.
14. DENIES the truth of the allegations contained in Paragraph 14 of the Complaint and respectfully refers all questions of law to the Court.
15. DENIES the truth of the allegations contained in Paragraph 15 of the Complaint.
16. DENIES the truth of the allegations contained in Paragraph 16 of the Complaint.
17. Defendant repeats and realleges each and every allegation set forth above in Paragraphs 1 to 16 as though they were fully set forth herein.
18. ADMITS the truth of the allegations contained in Paragraph 18 of the Complaint.

19. DENIES the truth of the allegations contained in Paragraph 19 of the Complaint and respectfully refers all questions of law to the Court.
20. DENIES the truth of the allegations contained in Paragraph 20 of the Complaint and repeats and realleges each and every allegation set forth above in Paragraphs 1 to 19 as though they were fully set forth herein.
21. DENIES the truth of the allegations contained in Paragraph 21, 21 (a), 21 (b), 21 (c) and respectfully refers all questions of law to the Court.
22. DENIES the truth of the allegations contained in Paragraph 22 of the Complaint.
23. DENIES the truth of the allegations contained in Paragraph 23 of the Complaint.
24. DENIES the truth of the allegations contained in Paragraph 24 of the Complaint and repeats and realleges each and every allegation set forth in Paragraphs 1 to 23 as though they were fully set forth herein.
25. DENIES the truth of the allegations contained in Paragraph 25 of the Complaint.
26. DENIES the truth of the allegations contained in Paragraph 26 of the Complaint.
27. DENIES the truth of the allegations contained in Paragraph 27 of the Complaint.
28. DENY that Plaintiffs are entitled to any of the relief requested in (A), (B), (C), (D), or (E) of the WHEREFORE paragraph of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The Defendant has acted in a good faith belief that it was complying with all applicable provisions of the Fair Labor Standards Act.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Defendant has and had no intention of violating any provision of the Fair Labor Standards Act. Therefore, the Defendant did not and is not willfully violating the Fair Labor Standards Act.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Any overtime due to the Plaintiffs under the Fair labor Standards Act have been paid in full.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The Complaint seeks payment for hours that are not “work” time within the meaning of the Fair Labor Standards Act and its implementing regulations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The Defendant has implemented a work period pursuant to 29 U.S.C. § 207(k). Therefore, Plaintiffs did not work any hours in excess of the 7(k) work period that entitle them to overtime payment under the Fair Labor Standards Act.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

Opt-in Plaintiffs may not be similarly situated as required for a collective action under the Fair Labor Standards Act.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Complaint seeks payment for hours that are not compensable under Section 203(o) of the Fair Labor Standards Act.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The Complaint seeks payment for hours that are preliminary and postliminary to the Plaintiffs' principal work activities and thus not compensable under the Fair Labor Standards Act or the Portal-to-Portal Act.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

To the extent that any of the Plaintiffs are "exempt" employees within the meaning of the Fair Labor Standards Act, they are not entitled to any relief in this lawsuit.

RESERVATION OF RIGHTS

Defendants reserve the right to amend or further plead any other defenses applicable to any and all counts after a reasonable opportunity for discovery.

WHEREFORE, the Defendant City of Mount Vernon requests that judgment be rendered against the Plaintiffs dismissing this action in its entirety and awarding it costs and disbursements and such other and further relief as the Court deems to be appropriate.

Dated: March 13, 2008
New York, New York

BOND, SCHOENECK & KING, PLLC

By: /s John Ho
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